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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 527

THE SIOUX TRIBE OF INDIANS, PETITIONER

v.

THE UNITED STATES

*ON PETITION FOR WRIT OF CERTIORARI TO THE COURT
OF CLAIMS*

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 129-135) is reported at 78 F. Supp. 793. An earlier opinion (R. 72-116) is reported at 105 C. Cls. 725.

JURISDICTION

The judgment of the Court of Claims was entered on June 28, 1948 (R. 136). A motion for new trial was denied on November 1, 1948 (R. 136). The petition for writ of certiorari was filed on Jan-

uary 28, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. sec. 1255(1).

QUESTION PRESENTED

Whether expenditures made by the United States pursuant to section 17 of the Act of March 2, 1889, 25 Stat. 888, may be applied in satisfaction of claims of the petitioner against the United States.

STATUTE INVOLVED

Sections 2 and 11 of the Act of August 13, 1946, 60 Stat. 1049, 1050, 1052, provide in part:

SEC. 2. * * *

In determining the quantum of relief the Commission shall make appropriate deductions for all payments made by the United States on the claim, and for all other offsets, counterclaims, and demands that would be allowable in a suit brought in the Court of Claims under section 145 of the Judicial Code (36 Stat. 1136; 28 U. S. C. sec. 250), as amended; the Commission may also inquire into and consider all money or property given to or funds expended gratuitously for the benefit of the claimant and if it finds that the nature of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience warrants such action, may set off all or part of such expenditures against any award made to the claimant, except that it is hereby declared to be the policy of Congress that monies spent for the removal of the claimant from one place to another at the request of the United States, or for agency or other administrative, educational, health or

highway purposes, or for expenditures made prior to the date of the law, treaty or Executive Order under which the claim arose, or for expenditures made pursuant to the Act of June 18, 1934 (48 Stat. 984), save expenditures made under section 5 of that Act, or for expenditures under any emergency appropriation or allotment made subsequent to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief from distress caused by unemployment and conditions resulting therefrom, the prosecution of public work and public projects for the relief of unemployment or to increase employment, and for work relief (including the Civil Works Program) shall not be a proper offset against any award.

SEC. 11. Any suit pending in the Court of Claims or the Supreme Court of the United States or which shall be filed in the Court of Claims under existing legislation, shall not be transferred to the Commission: *Provided*, That the provisions of section 2 of this Act, with respect to the deduction of payments, offsets, counterclaims and demands, shall supersede the provisions of the particular jurisdictional Act under which any pending or authorized suit in the Court of Claims has been or will be authorized: *Provided further*, That the Court of Claims in any suit pending before it at the time of the approval of this Act shall have exclusive jurisdiction to hear and determine any claim based upon fair and honorable dealings arising out of the subject matter of any such suit.

STATEMENT

This case is companion to No. 526.

Petitioner brought the five suits embraced in this petition to recover what was due from the United States for the sale of unallotted lands in the reservations previously set up by the Act of March 2, 1889, 25 Stat. 888 (R. 2-31). The Court of Claims found that petitioner was entitled to recover for principal and interest a total of \$2,423, 166.15 (R. 115). It found that the United States was entitled to credits in an equal amount and accordingly that petitioner was not entitled to judgment (R. 115-116). These credits resulted from the expenditures made by the United States to allottees under section 17 of the 1889 Act (see R. 134).

When, as in No. 526, the judgment against petitioner was vacated and the cause remanded to determine the effect of the Act of August 13, 1946, 60 Stat. 1049 (329 U. S. 685), petitioner filed a supplemental petition in the Court of Claims asserting that Section 2 of the Act of August 13, 1946, *supra*, pp. 2-3, barred the Government from taking credit for certain of the expenditures made by it (R. 119-125), and the United States moved to dismiss (R. 126-127). On June 28, 1948, the court granted the Government's motion (R. 136) and on November 1, 1948, it denied petitioner's motion for a new trial.

ARGUMENT

Petitioner's contention (Pet. 4-6) that the Act of August 13, 1946, would deny the United States

credit for expenditures to allottees under section 17 of the Act of August 2, 1889, must fail for the reasons advanced in the Government's brief in opposition in No. 526.

Its further contention (Pet. 6-9) that, in any event, certain of these expenditures were made after enactment of the statutes authorizing sale of the unallotted lands and hence could not be "offset" because of section 2 of the Act of August 13, 1946, is equally erroneous. Section 2 (pp. 2-3, *supra*) provides that "money or property given to or funds expended gratuitously for the benefit of the claimant" may under certain circumstances be set off against any award but that "monies spent for *** expenditures made prior to the date of the law *** under which the claim arose * * * shall not be a proper offset against any award." Thus, the provision refers to gratuitous expenditures, gifts made by the United States. See *Seminole Nation v. United States*, 316 U. S. 286, 308-309. But, as the court below held (R. 134), the expenditures under section 17 were not gratuitous; it was intended they should be repaid. Strictly speaking, they are credits rather than offsets. Therefore, they are not covered by section 2 and—whether made before or after the statutes under which petitioner's claims arose—were rightly applied to satisfy the Government's obligation under those claims.

CONCLUSION

The decision below is correct and the case does not warrant review. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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MAY, 1949.

